

Notices of Proposed Summary Rulemaking

NOTICES OF PROPOSED SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, or repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rulemaking with the Governor's Regulatory Review Council and the Secretary of State's Office for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*.

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TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

PREAMBLE

1. Sections Affected

Article 13  
R12-5-1302  
Article 16  
R12-5-1601  
R12-5-1602  
R12-5-1603  
R12-5-1604  
R12-5-1605  
R12-5-1606  
R12-5-1607  
R12-5-1608  
R12-5-1609  
R12-5-1610  
R12-5-1611  
R12-5-1612

Rulemaking Action

Repeal  
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2. The specific authority for the rulemaking including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 37-132 (A) (1)

Implementing statute: Laws 1979, Ch. 139, § 1, effective April 24, 1979, amended A.R.S. § 37-102 (Land Department; powers and duties) by repealing the State Land Department's statutory authority regarding administration of all lands relating to the control, supervision, distribution, and appropriation of the waters of the state.

Laws 1979, Ch. 139, § 79, effective April 24, 1979, provided that the State Land Department rules were effective until superseded by the rules adopted by the Arizona Water Commission.

Laws 1980, 4th Special Session; Ch. 1, § 169; effective June 12, 1980, provided that the rules adopted by the Arizona Water Commission were effective until superseded by the rules adopted by Department of Water Resources under 12 A.A.C. 12.

3. The interim effective date of the proposed summary rules:

May 3, 1996.

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Richard B. Oxford, Director  
Operations Division

or

Rebecca Matus  
Administrative Secretary

Address: Arizona State Land Department  
1616 West Adams  
Phoenix, Arizona 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

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5. An explanation of the rule, including the agency's reasons for initiating the rule:  
A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking when an agency's rules become obsolete by repeal of the agency's statutory authority. The Department's authority regarding public waters (Article 13), water rights (Articles 14 & 15) and ground water (Article 16 & 16.1) was transferred to the Arizona Water Commission (Laws 1979, Ch. 139, § 1, effective April 24, 1979). Subsequently, these authorities were transferred to the Department of Water Resources pursuant to the Groundwater Management Act, Laws 1980, 4th Special Session, Ch. 1, § 169, effective June 12, 1980.
6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:  
Not applicable.
7. The preliminary summary of the economic, small business, and consumer impact:  
Not applicable according to A.R.S. § 41-1055(D)(2).
8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:  
Not applicable.
9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:  
No oral proceedings or hearings are scheduled. A person may submit written comments or request that an oral proceeding be held on the repeal of these rules by submitting the comments or a written request for hearing no later than 5 p.m., June 3, 1996, to:  
Name: Richard B. Oxford, Director  
or  
Rebecca Matus, Administrative Secretary  
Address: State Land Department  
1616 West Adams  
Phoenix, Arizona 85007  
Telephone: (602) 542-4602  
Fax: (602) 542-5223
10. An explanation of why summary proceedings are justified.  
A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking when an agency's rules become obsolete by repeal of the agency's statutory authority. The Department's authority was transferred to the Arizona Water Commission (Laws 1979, Ch. 139, § 1, effective April 24, 1979). Subsequently, these authorities were transferred to the Department of Water Resources pursuant to the Groundwater Management Act, Laws 1980, 4th Special Session, Ch. 1, § 169, effective June 12, 1980.
11. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:  
None.
12. Incorporations by reference and their location in the rules:  
None.
13. The full text of the rules follows:

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 5. LAND DEPARTMENT**

**ARTICLE 13. PUBLIC WATERS**

**Section**

R12-5-1302: Surface Water Rules and Regulations

**ARTICLE 14. RIGHT TO THE USE OF APPROPRIABLE WATERS (RESERVED)**

**ARTICLE 15. DETERMINATION OF RIGHT TO USE WATER (RESERVED)**

**ARTICLE 16. GROUNDWATER**

**Section**

R12-5-1601: Definitions  
R12-5-1602: Miscellaneous Rules  
R12-5-1603: Notice  
R12-5-1604: Permits and Reports Required in Critical Areas  
R12-5-1605: Enforcement, Penalties, Appeal

R12-5-1606: Definitions  
R12-5-1607: Miscellaneous Rules  
R12-5-1608: Application for Certificate of Exemption; Notice; Hearing  
R12-5-1609: Annual Reports  
R12-5-1610: Revocation of Certificates of Exemption  
R12-5-1611: Enforcement, Rehearing, Review, and Repeal  
R12-5-1612: Enforcement of Provisions Restricting Transfers of Groundwater

**R12-5-1302: Surface Water Rules and Regulations**

A: General information relative to water filings. The Arizona Water Code became effective June 12, 1919. Prior to that date, a water right could be established in either of two ways:  
1: By posting notice of appropriation at point of diversion and filing copy of such notice in the recorder's office of the county in which located, and application to beneficial

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- use; or
2. Merely by application to beneficial use.  
Old water rights established by these means are not officially of record in the office of the State Land Department, Water Rights Division, and holders of such rights have often found it desirable to have such record established.  
Regardless of the method used to establish an Arizona water right, voluntary discontinuance of such beneficial use for a period of five successive years, by law, constitutes abandonment and forfeiture of the rights.  
Since June 12, 1919, a water right can be established only by proper filing in the office of the State Land Department, Water Rights Division, and by the completion of the various steps leading to the issuance of a certificate of water right. These steps are as follows:
    - a. Filing of application, map and fee with the State Land Department, Water Rights Division. The priority of the right will date from the time the filing is accepted.
    - b. Posting of notices.
    - c. Granting of permit or rejection of the application by the Commissioner.
    - d. If permit is granted, filing of notice of beginning of construction, within two years from date of permit.
    - e. Filing of notice of completion of construction.
    - f. Filing of proof of appropriation.
    - g. Issuance of certificate of water right.
    - h. Filing of certificate of water right in the office of the county recorder of the county in which the water is used.
- B. Filing of applications with the State Land Department (Water Rights Division)
1. Application for a permit to appropriate public waters of the state of Arizona. An application for a permit to appropriate public waters of the state of Arizona shall be made in duplicate upon forms provided by the Department.
  2. Maps
    - a. The map submitted with the application is a part thereof and shall agree in all respects with the statements contained in the application. The map must be of a standard equal to the maps printed by the United States Geological Survey (quad sheets) or state Orthophoto Base maps.
    - b. The map shall clearly show the township and range, shall be plotted to the true meridian and the North point shall be indicated by an arrow. Sections shall be clearly shown and numbered.
    - c. The location of the river, stream, or other source of supply, or upon which a reservoir is located, must be shown on the map, arrows being used to indicate the direction of flow.
    - d. The land area to be irrigated from any ditch or other conduit shall be cross-hatched. Each 40-acre subdivision or portion thereof to be irrigated shall be shown.
    - e. The map accompanying a reservoir application must show the contour of the ground surface to be submerged.
  3. Application for enlargement. In the event it is proposed to enlarge an existing ditch, reservoir or other project involving an increase in the amount of water proposed to be appropriated, an application shall be made in the same form as for an original application. The application shall be made for the additional amount of water proposed to be appropriated, reference being made to the permit or certificate of water right already existing. The map accompanying an application for enlargement of an existing facility shall conform to all requirements pertaining to an original application. The proposed enlargement should be shown in solid lines and the existing works should be shown by lines dotted, or otherwise different to distinguish the existing from the proposed works. The application shall be made to appropriate on the additional amount applied for over the amount previously appropriated by the original works.
  4. Application for severance. Transfer or change of water right shall be made upon State Land Department, Water Rights Division forms.
  5. Position of notices. After an application to appropriate water shall have been received by the Department, accompanied by the map(s) herein required and has been examined by the Department, two notices for posting shall be sent to the applicant with instructions as to such posting. The applicant shall notify the Department when the notices have been posted. Said notices shall be posted in conspicuous places such as a post office bulletin board or a store nearest the proposed point of appropriation, or at such place or places where the Department may direct for 30 consecutive days with the day of posting being the first day of the consecutive period.
  6. Affidavit of posting. At the end of the posting period, an affidavit of posting notice shall be executed by the applicant and filed with the Department.
  7. Protests: answer by applicant. Any person who may be adversely affected by the approval of an application and the granting of a permit may file a protest, containing the information required by the posted notice, against the approval of the application and the issuance of a permit. Such protest shall be in writing and filed with the Department in duplicate within 30 days from the ending date of such notice. The applicant may, within 30 days from the date of receipt of the protest from the Department, file with the Department, in duplicate, a responsive answer or pleading to the protest. No protest will be considered unless the same is filed in writing as herein provided.
  8. Action by the Department on protest. The Department shall, by means of field investigation, public hearing or by such other means as it may deem advisable, make a determination as to the justification of such protest. In the event a hearing is necessary, it shall be held pursuant to the provisions found in Title 41, Chapter 6, Article 1, Arizona Revised Statutes. The hearing shall be conducted on the basis of factual data as to the water available from the source and the amount which has been beneficially used by the existing rights. A copy of the Commissioner's order shall be sent to all interested parties.
  9. Approval or disapproval of application by Commissioner. In the event that no protests are received to the approval of the application and to the granting of the permit within the 30-day period after the posting of said notices, or if a protest has been filed and the Commissioner has denied the protest, the Commissioner may approve the application and grant the permit. Upon the approval of the application, the duplicate application with the terms of the permit stated thereon and signed by the Department shall be returned to the applicant. If the application has been rejected for any reason, the duplicate copy of the application shall be returned to the applicant together with the order of rejection.
  10. Assignment of application to appropriate. Assignment of permit. An application to appropriate water may be

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assigned, but shall not be binding, except upon the parties thereto, unless the assignment is approved by and filed with the State Land Department, Water Rights Division. A permit to appropriate water may be assigned, subject to the conditions of the permit, but shall not be binding, except upon the parties thereto, unless the assignment is approved by the Commissioner and filed with the State Land Department, Water Rights Division.

11. Notice of beginning of construction. After the approval of an application and the issuance of permit, the applicant shall, after construction has been actually commenced on the project, file with the Department notice of beginning of construction showing that construction has actually been started within two years, except a city or town for municipal use, following approval of the permit as required by law.
12. Application for extension of time. Extensions of time to complete the project and apply the water to a beneficial use may be granted by the Department upon written application by the applicant and holder of a permit, setting forth in full the reasons why such extensions are necessary.
13. Proof of appropriation of water and issuance of certificate. When an applicant and a holder of a permit has completed the appropriation of water set forth in his application and permit, he shall file with the Department on a Water Rights Division form proof of appropriation of water. After a field inspection or such other investigation of the completed project by the Department has been made and the Department is satisfied therefrom that all the requirements of law and these rules and regulations have been met, a certificate of water right shall be issued to the applicant or his assignee of record in the State Land Department, contained, and such other conditions as may be added thereto, and the provisions of law and these rules and regulations.
14. Actions for cancellations of permits or certificates of water rights. The Department reserves the right to bring an action by statute or in a court of competent jurisdiction, to cancel any permit or certificate of water right issued by the Department when, in the opinion of the Department the same was issued by mistake or not in accordance with law or was issued through fraud, deceit, wilful misrepresentation, or concealment of facts relating to its issue, the truth or falsity of which statement or the knowledge of acts concealed, if known to the Department, would have prevented the issuance or execution of the same in the form or to the person issued. The procedure for cancellation shall be governed by the general rules and regulations of the State Land Department, as contained in Chapter I hereof.

C. Old rights. In order to provide public record of claimed old rights, and to provide a ready reference in the Department to aid in the determination of whether claimed vested rights exist when passing on an application to appropriate water, the following procedure is adopted:

1. Any person claiming an "old right" acquired prior to June 12, 1919, may file with the State Land Department, Water Rights Division, an affidavit setting forth the nature of said right, the date of acquisition of affiant or his predecessor in interest, and the book and page when recorded (if recorded).
2. If said "old right" has been recorded, a certified copy of same should be attached to the affidavit.
3. Said affidavit will be filed for record in the Department. It should be in sufficient detail, accompanied by map(s),

to enable the Department to readily identify the source, point of diversion, amount of water used and the works, if any.

4. Any other documentary evidence (affidavits of individuals knowing the facts, etc.) that will support the claimed old right should be attached to claimant's affidavit.

ARTICLE 14. RIGHT TO THE USE OF APPROPRIABLE WATERS (RESERVED)

ARTICLE 15. DETERMINATION OF RIGHT TO USE WATER (RESERVED)

ARTICLE 16. GROUNDWATER

R12-5-1601. Definitions

1. "Critical groundwater area" means any groundwater basin as defined in (5) below or any designated subdivision thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of the cultivated lands in the basin at the then current rates of withdrawal.
2. "Department" means the State Land Department.
3. "Exempted well" means a well or other works for the withdrawal for ground water used for domestic, stock watering, domestic utility, industrial or transportation purposes and a well for the irrigation of not exceed 320 acres of land actually used by a bona fide established public or private secondary school or institution of higher learning having at least 100 full time students enrolled, which secondary school or institution is engaged in the teaching of or experimentation in the science of agriculture, and where the curriculum of such school or institution includes a course in the study of or experimentation in the science of agriculture, provided the use of water produced from any such well shall be limited to such purpose only and neither the water produced from the well nor such well shall be leased, sold or otherwise disposed of whereby other interests may acquire or use the same for any other purpose. If any such school or institution ceases to teach the science of agriculture, the right to produce water from such well for irrigation purposed shall terminate.
4. "Ground water" means water under the surface of the earth regardless of the geologic structure in which it is standing or moving. It does not include water flowing in underground streams with ascertainable beds and banks.
5. "Groundwater basin" means land overlying, as nearly as may be determined by known facts, a distinct body of ground water. It may consist of any determinable part of a groundwater basin.
6. "Groundwater subdivision" means an area of land overlying, as nearly as may be determined by known facts, a distinct body of ground water. It may consist of any determinable part of a groundwater basin.
7. "Irrigation district" means a district organized by law for the irrigation of the lands comprising a district, whether designated as an irrigation district, water conservation district, water users' association, mutual irrigation project or otherwise.
8. "Irrigation well" means any well or works for the withdrawal of ground water primarily used for irrigation purposes and having a capacity in excess of 100 gallons per minute.
9. "Notice of intention to drill" means the notice required to be sent to the State Land Department by all person intending to drill new wells.
10. "Owner of land" means any person in whom legal title to

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real property is vested or any person having equitable interest in real property.

11. "Permit" means a permit to construct and operate a well or other works for the withdrawal of ground water.
12. "Person" includes an individual, firm, public or private corporation or government agency.
13. "Users of ground water" means any person who is putting ground water to a beneficial use primarily for irrigation purposes.
14. "Well" means a pit, hole or shaft sunk into the earth in order to obtain ground water from a subterranean supply.
15. "Commissioner" means State Land Commissioner.

**R12-5-1602: Miscellaneous Rules**

- A:** Scope. These rules and regulations are general rules implementing the groundwater laws of the state of Arizona (Article 7, Chapter 1, Title 45, Arizona Revised Statutes, entitled "Ground Waters") and shall prevail over and supersede any existing rules and regulations, policy or procedure to the extent that they are in conflict therewith.
- B:** Authority
1. The Department is charged, by law, with the administration of the law pertaining to ground waters, including the adoption and publication of reasonable rules and regulations necessary to that administration.
  2. The State Land Commissioner is the executive officer of the Department charged, by law, to exercise and perform all powers and duties vested in or imposed upon the Department.
    - a. Nothing herein contained shall be construed to limit the jurisdiction of the Commissioner in his administration of the groundwater laws of the state of Arizona.
    - b. Such limitation is reserved to the law and to courts of competent jurisdiction.
- C:** Designation of groundwater basins. Groundwater basins shall be designated by the Department in accordance with the provisions of A.R.S. § 45-303.
- D:** Designation or alteration of critical areas. Critical areas shall be designated or altered by the Department in accordance with the provisions of A.R.S. §§ 45-308, 45-309, 45-310 and 45-311.
- E:** Wells not affected. Nothing in these rules shall be construed to affect the right of any person to construct and operate an exempted well as defined in A.R.S. § 45-301, nor to affect the right of any person to continue the use of water from existing irrigation wells.
- F:** Drilling card
1. No person or irrigation district shall drill a well without having first secured a drilling card by means of a notice of intention to drill, receipted by the Department, or issuance of a permit to drill by the Department.
  2. Making a copy of a document filed, 10¢ for each 100 words or fraction thereof.
  3. Certifying copies, documents, records or maps, \$1.00 for each certification.
  4. Furnishing blueprint or photostat copy of any map, drawing or document required by the Department, actual cost of the work.
  5. Issuing permit to construct a well, \$5.00.
  6. Filing notice of intention to drill, \$3.00.
- H:** Registration of well
1. All persons owning or operating irrigation or drainage wells, the registration of which is required by law, shall register them with the Department on the form and in the manner prescribed by the Department.
  2. For the convenience of any person desiring to make a

record of a well previously unrecorded, and as required by the Department, the Registration of Well form, mentioned in (1) above, shall be executed in the manner prescribed by the Department.

**R12-5-1603: Notice and Reports, All Wells in State**

- A:** Notice of intention to drill, drilling card
1. No person shall drill or cause to be drilled any well for the development and use of ground water without first filing notice of intention to drill with the Department in the form prescribed and furnished by the Department.
  2. Notice of intention to drill shall be filed with the Department in duplicate.
    - a. The Department will record the notice and return the receipted duplicate, together with a drilling card to the person filing.
    - b. Upon receipt, by the person filing, of the receipted duplicate and drilling card, this rule shall be deemed to have been fully complied with:
      - i. The well described in the notice must be completed within one year of receipt of drilling card.
      - ii. In case of failure to complete the well described, a new application may be filed.
  3. For the purposes of these rules and regulations, a person who has made and filed proper application for any permit required by the groundwater law shall be deemed to have filed notice of intention to drill as required in (1) above.
- B:** Driller's report, log
1. When the drilling of a well is completed, the driller shall file a copy of the log thereof with the Department, together with a report of the casing installed. If the well is an artesian well, the detail of the capping applied shall be filed with the Department.
  2. The driller's report shall be in such form as the Commissioner may prescribe and as furnished by the Department.
- C:** Failure or refusal to file notices or reports; penalty. A person who fails or refuses to give any of the notices required, make any of the reports, or fails to cooperate with the Department under the provisions of the law set out in A.R.S. §§ 45-304, 45-305 and 45-306, is guilty of a misdemeanor punishable by a fine not exceeding \$100.00.

**R12-5-1604: Permits and Reports Required in Critical Areas**

- A:** Permit to drill irrigation well. No person, except as otherwise provided, shall construct an irrigation well in a critical groundwater area established as provided by the groundwater laws without a permit therefor.
- B:** Application for permit to drill irrigation well
1. A person proposing to construct an irrigation well within a critical groundwater area shall make application to the Department for a permit authorizing such construction. The application shall be in such forms as the Commissioner may prescribe and shall be accompanied by the necessary fees prescribed by law and these rules and regulations.
  2. No permit shall be required for completion of any well located within a critical groundwater area on which construction work had been commenced to the extent that a bona fide drilling rig was set up over the well site and drilling was in progress at the time of receipt by the owner, of the order of prohibition required by A.R.S. § 45-308, but the well or other works for the withdrawal of ground water thus substantially commenced shall be completed within one year from the date of designation or alteration of the critical groundwater area.

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**C. Issuance of permit to drill irrigation well**

1. Upon application, as provided above, the Department shall issue a permit for the construction of the proposed well, but no permit shall be issued for the construction of an irrigation well within any critical groundwater area for the irrigation of lands which on the date the area was declared critical, were not irrigated, or had not been cultivated within five years prior thereto.
2. Except as provided by law, no permit shall be issued to any person other than the owner of the land on which the proposed well is to be located, or to an irrigation or agricultural improvement district or other organized irrigation project for the use upon lands within the district or project.

**D. Change of irrigation well location after issuance of permit.** The holder of a permit desiring to change the location of the well authorized by (C) above shall make application to the Department for an amendment of the permit. The application shall contain the same information as required for an original application. If the Department determines that the proposed well when constructed at the proposed new location will be used to irrigate the same lands as the original well and will be located within the exterior boundaries of the same critical area, it shall approve the application and issue an amended permit therefor.

**E. Permits for replacing or deepening irrigation wells.**

1. A permit shall be granted by the Department for the replacement or deepening of an existing irrigation well upon a satisfactory showing that the well intended to be replaced or deepened will no longer yield sufficient water to irrigate the land normally supplied by it within the five years immediately prior to filing application for the permit.
2. A person proposing to drill a replacement well or deepen an existing irrigation well shall make application to the Department for a permit authorizing action. The application shall be in such form as the Commissioner may prescribe and shall be accompanied by the necessary fees prescribed by law and these rules and regulations.
3. No permit shall be issued until the Department has determined that the proposed deepening is necessary, or that the replacement well is a bona fide replacement of an existing well.

**F. Completion report on irrigation well drilled under permit.**

1. Upon completion of construction of a well in compliance with the terms of the permit therefor, the permittee shall file a written statement with the Department, in such form as may be prescribed by the Commissioner, containing the information necessary to establish compliance with the terms of the permit and the groundwater law.
2. The well driller or other constructor of works for the withdrawal of ground water shall furnish the permittee a verified record of the factual information necessary to show compliance with this rule.

**R12-5-1605. Enforcement, Penalties, Appeal**

**A. Enforcement.** The groundwater law requires that the Department shall enjoin or restrain any person irrigating, pumping or drilling in violation of the law.

**B. Penalties**

1. Any person who violates, or refuses or neglects to comply with any provision of the groundwater law or of any rule or regulation promulgated by the Department pursuant thereto, is guilty of a misdemeanor punishable by a fine of not less than \$25.00 nor more than \$250.00 for each offense.
2. Any person who, after notice that he is in violation of the

groundwater law, continues to violate any provision of the groundwater law and fails to comply therewith within a reasonable length of time is guilty of a separate offense for each day the violation continues.

**C. Appeals.** Any person aggrieved by a determination, order or decision of the Department may have the decision reviewed by appeal in the manner prescribed by A.R.S. § 45-154. The appeal to the superior court shall be heard de novo and the party appealing may appeal to the Supreme Court from an adverse judgment of the superior court.

**R12-5-1606. Definitions**

Unless the context otherwise requires:

1. "Annual use" means the amount of groundwater actually withdrawn annually for the irrigation of irrigated land averaged over the last five years in which such land was actually irrigated, except within the context of A.R.S. § 45-317.01(D), where as to irrigated land owned or leased prior to January 1, 1977, which is or has been retired by June 1, 1977, by a person transferring groundwater pursuant to subsection (A) of § 45-317.01, "annual use" means the annual amount of groundwater equal to the average of the amounts of groundwater withdrawn for the irrigation of such land in the five highest consecutive years, treating only those years in which the land was actually irrigated as consecutive in the period beginning eight years prior to purchase and ending January 1, 1977.
2. "Irrigated land" means land in a critical groundwater area owned or leased by a person which may lawfully be irrigated with groundwater.
3. "Retired irrigated land" means irrigated land which has been and is retired from irrigation anytime after its inclusion in a critical groundwater area, except such land which shall have been retired because pumping ground-water had become uneconomical.
4. "Replacement well" means a well constructed for the purpose of restoring by replacement, the original productive capabilities of another well no longer capable or withdrawing ground water in the volumes required.
5. "Deepened well" means a well whose bore has been extended downward from its former total depth.
6. "Changing the location of a well" means the construction of a new well at a different site for use in lieu of another well, the use of which will be discontinued upon construction of the new well.

**R12-5-1607. Miscellaneous Rules**

**A. Scope.** These rules and regulations are general rules implementing the groundwater laws of the state of Arizona governing the transfer of ground water (Chapter 29, Laws of 1977) and shall prevail over and supersede any existing rules and regulations, policy or procedure to the extent that they are in conflict therewith.

**B. Fee.** The Department shall collect, in advance, the following fee:

1. Filing application for Certificate of Exemption, \$500.00.

**C. Maps and data:** cities, towns, other political subdivision and public service corporations:

1. Each city, town, other political subdivision, and public service corporation engaged in the distribution of ground-water shall furnish to the Department upon request maps clearly delineating each service area, distribution system, and such other data as the Department may require.

a. Such map and data shall be initially furnished not later than December 31, 1977, and immediately after each subsequent extension of each such service area.

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**R12-5-1608: Application for Certificate of Exemption; Notice; Hearing**

**A: Application**

1. Except as provided in subsection (C) of § 45-317.01 and in § 45-317.03, a person who, prior to January 1, 1977, was transferring ground water from a critical groundwater area shall by December 31, 1977, file with the Department an application for a Certificate of Exemption.
  - a. No person shall commence a groundwater transfer pursuant to § 45-317.02 without obtaining a Certificate of Exemption.
2. Application shall be made on a form prescribed and furnished by the Department and shall be accompanied by the proper filing fee.
3. The Department may, for good cause shown, accept an application after the filing deadline.
4. The Department may, pursuant to subsection (C) of § 45-317.05, issue a provisional certificate for the transfer of ground water under 45-317.02 in the interim pending issuance of a certificate.
5. The Department may require such additional information as it deems necessary to the purpose of each application.

**B: Hearing**

1. If a hearing is required by § 45-317.06, notice shall be given pursuant to § 45-317.05, subsection (E) thereof.

**R12-5-1609: Annual Reports**

- A: The holder of a Certificate of Exemption shall file with the Department not later than March 1st of each year an annual report covering the operations thereunder during the preceding calendar year.
- B: The report shall be in such form as the Department may pre-

scribe and on forms furnished for that purpose and shall include that information set out in A.R.S. § 45-317.08.

**R12-5-1610: Revocation of Certificates of Exemption**

The Department shall review each Certificate of Exemption annually. If the Department finds cause to believe that a person has violated the terms of his Certificate or filed a false application or report with the Department, the Department may institute a proceeding pursuant to R12-5-01(AA) for the cancellation of an instrument issued by the Commissioner. After hearing, the Department may revoke a Certificate of a person who negligently transferred ground water in excess of the amount in the Certificate, and shall revoke a Certificate of any person who knowingly violated the terms of the Certificate or filed a false application or report with the Department.

**R-12-1611: Enforcement, Rehearing, Review and Appeal**

- A: The Department shall enforce all groundwater codes, including but not limited to Laws 1977, Ch. 29, by either enjoining or restraining any person who is violating any provision of the Arizona Groundwater Code, A.R.S. Title 45, Chapter 1, Article 7.
- B: Any decision or order of the Department made and entered pursuant to Laws 1977, Ch. 29, shall be subject to rehearing or review by the Department as more fully set forth in rule R12-5-03 of the Department's rules and regulations.

**R12-5-1612: Enforcement of Provisions Restricting Transfers of Groundwater**

This Article shall not affect any articles of incorporation, bylaws, rules or regulations or contracts which contain or provide for restrictions on transfers of ground water.